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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MAURICE P. OLIVIER,
12 CDCR #F-83603

13 Plaintiff,

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15 vs.
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17 L.E. SCRIBNER; LARRY SMALL; L.S.
18 McEWEN; T. OCHOA; A. MILLER;
19 GERALD EDWARDS; F. MATA; F.
20 RODRIGUEZ; B. GOINS; BANAGA-
BUGARIN; R. PETERS; D. HJERPE; K.
BALL; CHAU; NOGALES,

21 Defendants.
22
23

Civil No. 11-1447 MMA (RBB)

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PREPAY
FULL CIVIL FILING FEE**

[ECF No. 3]

24 Plaintiff, an inmate currently incarcerated at the California Treatment Facility located in
25 Soledad, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42
26 U.S.C. § 1983.

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1 Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead,
 2 he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a)
 3 [ECF No. 3].

4 I.

5 MOTION TO PROCEED IFP

6 All parties instituting any civil action, suit or proceeding in a district court of the United
 7 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
 8 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay only if the party is
 9 granted leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See*
 10 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176,
 11 1177 (9th Cir. 1999). “Under the PLRA [Prison Litigation Reform Act], all prisoners who file
 12 IFP civil actions must pay the full amount of the filing fee,” regardless of whether the action is
 13 ultimately dismissed for any reason. *See Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002)
 14 (citing 28 U.S.C. § 1915(b)(1) & (2)).

15 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also
 16 submit a “certified copy of the trust fund account statement (or institutional equivalent) for the
 17 prisoner for the 6-month period immediately preceding the filing of the complaint....” 28 U.S.C.
 18 § 1915(a)(2). From the certified trust account statement, the Court assesses an initial payment
 19 of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the
 20 average monthly balance in the account for the past six months, whichever is greater, unless the
 21 prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter,
 22 the institution having custody of the prisoner must collect subsequent payments, assessed at 20%
 23 of the preceding month’s income, in any month in which the prisoner’s account exceeds \$10, and
 24 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.
 25 § 1915(b)(2).

26 While Plaintiff has filed a Motion to Proceed IFP in this matter pursuant to 28 U.S.C.
 27 § 1915(a), he has not attached a certified copy of his prison trust account statement for the 6-
 28 month period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);

1 S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners “seeking to bring a
 2 civil action ...without prepayment of fees ... *shall* submit a certified copy of the trust fund
 3 account statement (or institutional equivalent) ... for the 6-month period immediately preceding
 4 the filing of the complaint.” 28 U.S.C. § 1915(a)(2) (emphasis added).

5 Without Plaintiff’s trust account statement, the Court is simply unable to assess the
 6 appropriate amount of the filing fee which is statutorily required to initiate the prosecution of
 7 this action. *See* 28 U.S.C. § 1915(b)(1).

8 Therefore, Plaintiff’s Motion to Proceed IFP must be DENIED.

9 II.

10 CONCLUSION AND ORDER

11 For the reasons set forth above, **IT IS ORDERED** that:

12 (1) Plaintiff’s Motion to Proceed IFP [ECF No. 3] is **DENIED**.

13 (2) This action is **DISMISSED** without prejudice for failure to prepay the \$350 filing
 14 fee mandated by 28 U.S.C. § 1914(a).

15 (3) Plaintiff if **GRANTED** an additional forty five (45) days from the date this Order
 16 is Filed to either: (1) pay the entire \$350 filing fee, **or** (2) file a new Motion to Proceed IFP,
 17 *which includes a certified copy of his trust account statement for the 6-month period preceding*
 18 *the filing of his Complaint* pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

19 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a
 20 Court-approved form “Motion and Declaration in Support of Motion to Proceed IFP” in this
 21 matter. If Plaintiff neither pays the \$350 filing fee in full nor sufficiently completes and files
 22 the attached Motion to Proceed IFP, *together with a certified copy of his prison trust account*
 23 *statement within 45 days*, this action shall remained closed without further Order of the Court.

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 26 DATED: July 6, 2011



27 Hon. Michael M. Anello
 28 United States District Judge